

1 Amend 2 Cal. Code Regs. section 18751 to read:

2  
3 **§ 18751. Procedure and Standards for Requesting Obtaining Exemption from**  
4 **Government Code Section 87300, Requiring Adoption and Promulgation of a**  
5 **Conflict of Interest Code.**  
6

7 (a) This section sets forth the procedure and standards by which the Fair Political  
8 Practices Commission will ~~review a request for~~ determine whether to grant an exemption ~~to~~  
9 from Government Code ~~Section 87300 from~~ to an agency for which the Commission is the  
10 code reviewing body. Other code reviewing bodies are encouraged to adopt the same or  
11 similar procedure and standards. Nothing in this section shall be construed to mean that a  
12 government agency is not required to adopt a conflict of interest code if it has not ~~requested~~  
13 ~~and~~ been granted an exemption.

14 (b) A governmental body qualifying as An agency, and therefore required to adopt  
15 and promulgate a Conflict of Interest Code pursuant to Government Code section 87300, or  
16 be included within another agency's Conflict of Interest Code, may submit a request to the  
17 Fair Political Practices Commission for exemption from ~~the provisions of Government~~  
18 ~~Code Section 87300 requiring adoption and promulgation of a Conflict of Interest Code~~  
19 that requirement if the Commission would be the agency's code reviewing body.  
20 Obtaining an exemption as provided in this regulation is the exclusive means by which an  
21 agency may obtain an exemption from the requirement to adopt and promulgate a Conflict  
22 of Interest Code. The term "agency" as used in this section means any state agency or local  
23 government agency with jurisdiction in more than one county.

24 (c) ~~A request for~~ An exemption shall be ~~approved~~ granted to an agency by the  
25 Executive Director only if he or she finds:

26 (1) That if the agency ~~requesting the exemption~~ were to adopt a Conflict of Interest  
27 Code, there would be no "designated employees," within the meaning of Government Code  
28 ~~Sections 82019 and 87302(a), subject to its provisions; or~~

29 (2) That the agency is, or {**DECISION POINT 1: [soon] [within one year]**} will  
30 be, inoperative and nonfunctioning; or

31 ~~(d) (3) An exemption to Government Code Section 87300 may be granted to an~~  
32 ~~agency when there would be no "designated employees" within the meaning of~~

1 ~~Government Code Sections 82019 and 87302(a) because all~~ That the agency is a  
2 committee, board, or commission that does not possess decisionmaking authority as  
3 defined in 2 Cal. Code Regs. section 18701(a)(1), and both of the following apply:

4 ~~(1) The agency does not have regulatory, quasi-regulatory, permit, licensing or~~  
5 ~~planning authority or functions;~~

6 ~~(2) (A)~~ The agency will not acquire real property in the foreseeable future; and

7 ~~(3) (B)~~ The annual operating budget exclusive of salaries for the agency is less than  
8 \$70,000. \$150,000;

9 **{DECISION POINT 2, Option 1:}** ~~[(e) (4) In all other circumstances, the~~  
10 ~~Executive Director will consider the requests for exemption on a case by case basis.(e)]~~

11 **{DECISION POINT 2 Option 2:}** ~~[(4)~~ That good cause exists for granting an exemption  
12 due to extraordinary circumstances that indicate the burden on the agency of adopting a  
13 conflict of interest code is not warranted by the degree of likelihood that a conflict of  
14 interest may occur.]

15 ~~(f) (d) A request for An exemption under subsection (c)(1) may be granted to an~~  
16 ~~agency or extended by the Executive Director on his or her own initiative or in response to~~  
17 ~~a request by the agency. A request by an agency shall be signed by the chief executive~~  
18 ~~officer or a legal representative of the agency and shall be accompanied by:~~ a statement of  
19 the alleged basis for a grant of exemption with supporting documentation, as described in  
20 subdivisions (e) through (g) of this regulation.

21 (e) A request for exemption under subdivision (c)(1) shall be accompanied by:

22 (1) A list of every position in the agency, including each officer, employee,  
23 member and consultant with the agency;

24 (2) A copy of the job description for each position listed in subsection (1) above;

25 (3) A copy of the statutory authority under which the agency was created with  
26 specific citations to the provisions setting forth the duties and responsibilities of the  
27 agency;

28 (4) Identification of the person or body to whom the agency reports;

29 (5) A copy of the last annual or regular report submitted by the agency to the  
30 person or body to whom the agency reports;

31 (6) A detailed justification of the request for exemption including an explanation of  
32 why none of the positions listed in subsection (1) above are designated employees. In

1 preparing this justification, particular note should be taken of Government Code ~~Section~~  
2 section 82019.

3 ~~(g) (f)~~ A request for exemption under ~~subsection~~ subdivision (c)(2) shall be ~~signed~~  
4 ~~by the chief executive officer or a legal representative of the agency and shall be~~  
5 accompanied by:

6 (1) A copy of the statutory or legal authority under which the agency ceased, or  
7 soon will cease, to operate or function;

8 (2) The date, time and place of the last meeting of the agency;

9 (3) Identification of the positions and names of any staff who continue to work for  
10 or represent the agency, whether salaried or unsalaried; and

11 (4) A detailed explanation of the reasons the agency is, or soon will be, inoperative  
12 and nonfunctioning.

13 (g) A request for exemption under subdivision (c)(3) shall be accompanied by:

14 (1) A copy of the statutory authority under which the agency was created with  
15 specific citations to the provisions setting forth the duties and responsibilities of the  
16 agency;

17 (2) Identification of the person or body to whom the agency reports; and

18 (3) A copy of the last annual or regular report submitted by the agency to the  
19 person or body to whom the agency reports;

20 (h) Within 90 days after receiving ~~the~~ a request for exemption, the Executive  
21 Director shall:

22 (1) Approve the request;

23 (2) Deny the request; or

24 (3) Return the request for additional information and resubmission within 60 days.

25 Upon resubmission, the Commission shall, within 60 days, either approve the request for  
26 exemption or deny the request.

27 (i) In the case of a newly created agency, the time limits prescribed by Government  
28 Code sections 87302.6 and 87303 for the members of a board or commission to file  
29 statements of economic interests, and for the agency to submit a proposed Conflict of  
30 Interest Code, shall be tolled while a request for exemption is under initial consideration by  
31 the Executive Director or reconsideration by the Commission, provided the request is  
32 submitted prior to the time limit expiring.

(j) When a request for an exemption is ~~approved~~ granted, the Executive Director shall issue an exemption letter and transmit it to the requesting agency. The exemption letter shall state a legal and factual basis for the granting of an exemption. **{DECISION POINT 2 Option 2:}** [When an exemption is granted under subdivision (c)(4), the letter shall also describe the particular extraordinary circumstances that warrant the granting of an exemption under that subdivision.] A copy of the exemption letter shall be transmitted to any person requesting it, and shall be posted on the Commission's website. Within 30 days after the exemption is granted, Any interested party may submit a request that the approval grant of exemption be reconsidered by the Commission. The Chairman shall consider the request and, if in his or her discretion good cause exists for reconsideration, he or she shall schedule the matter for hearing before the Commission.

(k) When a request for exemption is denied, the Executive Director shall issue a letter denying the request for exemption, transmit it to the requesting agency, and establish a new deadline by which the agency requesting the exemption shall submit a proposed Conflict of Interest Code to the Commission, or be included within the Conflict of Interest Code of another agency. If the request is from a newly created agency having a board or commission whose members are subject to the filing requirements imposed by Government Code section 87302.6, the letter denying the request for exemption shall also establish a new deadline, not exceeding 30 days from the date the letter is issued, by which the board or commission members shall file statements of economic interests pursuant to Government Code section 87200. A copy of the letter denying the exemption shall be transmitted to any person requesting it, and shall be posted on the Commission's website. Within 30 days after the request for exemption is denied, Any interested party may submit a request that the denial be reconsidered by the Commission. The Chairman shall consider the request and, if in his or her discretion good cause exists for reconsideration, he or she shall schedule the matter for hearing before the Commission.

(l) An exemption granted under subdivision (c)(3) of this regulation does not constitute formal written advice or informal assistance pursuant to 2 Cal. Code Regs. sections 18329 and 18329.5 concerning the duty of an individual to file a statement of economic interests under the provisions of an existing Conflict of Interest Code.

(m) Upon being issued, an exemption shall remain in effect until the basis for the grant of exemption no longer exists or the expiration of 2 years, whichever occurs earlier.

1 When an agency's exemption expires without being renewed on the Executive Director's  
2 own initiative, the agency shall either adopt and promulgate a Conflict of Interest Code  
3 pursuant to Government Code section 87300, submit a request for the exemption to be  
4 extended, or submit a new request for exemption.

5 (n) A request to extend an exemption need only consist of a declaration signed by  
6 the chief executive officer or a legal representative of the agency stating that the  
7 circumstances that served as the basis for the original grant of exemption have not changed.  
8 The request shall then be granted or denied according to the procedures set forth in  
9 subdivisions (h) through (j) of this regulation, and if granted, subject to the provisions of  
10 subdivision (k) of this regulation, just as an original exemption.

11  
12 Note: Authority cited: Sections 83108 and 83112, Government Code.

13 Reference: Section 87300 et seq., Government Code.